

MISC.CIVIL APPLICATION NO. 433 OF 1992.

Date of decision: 6.12.1995.

For approval and signature

The Honourable Mr. Justice S. M. Soni

and

The Honourable Mr. Justice R. R. Jain

Mr. G.A. Pandit, advocate for petitioner.

Mr. P.S. Champenari, A.,G.P. for respondent Nos.1 and

Mr. P.V. Hathi, advocate for respondent No.3.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.M. Soni & R.R. Jain, JJ.

December 6, 1995.

Oral judgment (Per Soni, J.)

Learned advocates for the parties are absent.

Petitioner, by way of this petition, has prayed for taking action against respondents under the Contempt of

Courts Act for non-compliance and breach of the order passed by this Court (Coram: R.K.Abichandani, J.) in Special Civil Application Nos.2614/89 and 3081/89 dated 12.12.1991. It is alleged that despite the order of this Court to give appointments as per existing select list, such appointments are not made and to the utter surprise and shock to the petitioner, respondent Nos.1 and 2 have given public advertisement in the newspaper "Fulchhap" inviting applications for the posts in question, that is, Gram Sevak, in various Districts of Gujarat State, and the breach of the order dated 12.12.1991 is alleged thereby. This Court on 12.12.1991 passed the following order:

".....In both these matters, therefore, the select/waiting lists in question shall remain operative until a fresh selection is made in terms of paragraph 3 of the Circular dated 29th May 1982 and the respondents shall fill-up the vacancies to the posts in question from these select/waiting lists until they remain operative, that is, until result of a fresh selection is declared in terms of paragraph 3 of the Circular dated 29th May 1982 which is at Ann.'C' in Special Civil Application No.2614/1989 and at Ann.'B' in Special Civil Application No.3081/1989."

From this order, it is clear that the authority was entitled to prepare fresh select list and further direction was given that until a fresh selection is made, vacancies, if any, shall be filled up from the existing select list. The alleged advertisement whereby the breach is alleged and vacancies are shown is in any case prior to 6.5.1991, much before the order passed by this Court. Therefore, the advertisement inviting applications for preparing select list was given much prior to the order and the authority was not prohibited from preparing fresh select list in accordance with rules. There is nothing on record to show that any advertisement was given subsequent to the order of this Court and the respondents have defied the order of this court. In this petition there is no averment worth the name that there were vacancies which were required to be filled up and are not filled up and deliberately delay is caused in giving appointments. Thus, there appears no act on the part of the respondents which would amount to defy the order of this court much less wilful defiance. When the fact of wilful defiance is not established, the case of the petitioner does not fall within the definition of civil contempt as defined in clause (b) of Section 2 of the Contempt of Courts Act. In view of this fact, the application is not maintainable and deserves to

be dismissed.

In the result, application is dismissed. Rule
discharged. No order as to costs.